

# **CONSTRUCTION ENGINEERING AND INSPECTION SERVICES FOR MISCELLANEOUS PROJECTS**

**2018-09**



**The Town of Miami Lakes Council:**

**Mayor Manny Cid  
Vice Mayor Frank Mingo  
Councilmember Luis Collazo  
Councilmember Timothy Daubert  
Councilmember Ceasar Mestre  
Councilmember Nelson Rodriguez  
Councilmember Marilyn Ruano**

Alex Rey, Town Manager  
The Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

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This Agreement made this 20<sup>th</sup> day of March in the year 2017<sup>9</sup> ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and R.J. Behar & Company, Inc., hereinafter called the "Consultant."

#### **RECITAL**

**WHEREAS**, the Town issued a Request for Qualifications ("RFQ") 2018-09 on November 15, 2017 for the provision of miscellaneous construction engineering and inspection services and received Consultant's proposal ("Proposal") in response thereto, was selected as one of the most qualified for the provision of said Services. The RFQ and the Proposal are expressly incorporated into and made a part of this Agreement as if set forth in full.

**WHEREAS**, the Town, through action of the Town Manager or the Town Commission, as applicable, has selected the Consultant in accordance with Section 287.055, Florida Statutes, (Consultants' Competitive Negotiation Act), and the applicable provisions of the Town Procurement Ordinance, to provide the professional services as described herein.

**WITNESSETH**, that the Town and the Consultant, for the considerations herein set forth, agree as follows:

#### **SECTION A - GENERAL TERMS AND CONDITIONS**

##### **Article A1 Definitions**

- A1.01 Additional Services** means any Work defined as such in this Agreement, secured in compliance with Florida Statutes and Town Code.
- A1.02 Attachments** mean the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.
- A1.03 Base Fee** means the amount of compensation mutually agreed upon for the completion of the Services under this Agreement.
- A1.04 Basic Services** means those services designated as such in a Work Order.
- A1.05 Consultant** means the individual, partnership, corporation, association or any combination thereof, of properly registered professional architects, or engineers, which has entered into the Agreement to provide professional services to the Town.
- A1.06 Contractor** means an individual, partnership, corporation, association, or any combination thereof, which has entered into a contract with the Town for construction
- A1.07 Errors** means items in the plans, specification or other documents prepared by the Consultant that are shown incorrectly, which results in a change to the Services or results in the need for the construction contractor to perform rework or additional work or which causes a delay to the completion of construction.
- A1.08 Errors and Omissions** means design deficiencies in the plans, specification or other documents prepared by the Consultant, which must be corrected in order for the project to function or be built as intended.

- A1.09 Final Acceptance** means the acceptance of the plans, specification or other documents prepared by the Consultant by the Town, which will occur after the Town have reviewed the plans, specification or other documents and confirmed that the plans, specification or other documents incorporates all of the requirements of the Services and any comments previously provided by the Town.
- A1.10 Inspector** means an employee or representative of the Town assigned by the Town to make observations of work performed by a Contractor.
- A1.11 Notice to Proceed** means same as “Authorization to Proceed.” A duly authorized written letter or directive issued by the Town Manager or Procurement Manager acknowledging that all conditions precedent have been met or directing that Consultant may begin performing the Services.
- A1.12 Omissions** means details of information are missing from the plans, specification or other documents prepared by the Consultant, which are necessary for the proper and safe completion of the Project.
- A1.13 Project Manager** means an employee or representative of the Town assigned by the Town Manager to manage and monitor the Services to be performed under this Agreement.
- A1.14 Professional Services** means those services within the scope of the practice of architecture, professional engineering, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, or registered surveyor or mapper in connection with his or her professional employment or practice. These services may be abbreviated herein as “architectural/ engineering services” or “professional services”, as applicable, which are within this definition.
- A1.15 Professional Services Agreement (“Agreement” or “PSA”)** means this Agreement and all attachments and any authorized amendments thereto. In the event of a conflict between the Request for Qualifications (“RFQ”) and the Consultant’s response thereto the RFQ will control. In the event of any conflict between the Consultant’s response to the RFQ and this PSA, this PSA will control. In the event of any conflict between this PSA and its attachments this PSA will control.
- A1.16 Project** means the construction, alteration and/or repair, and all services and incidentals thereto, of a Town facility or property or other task/scope, as contemplated and budgeted by the Town. A Project will be further defined in the Scope of Services of any Work Order issued under the Agreement.
- A1.16 Scope of Services or Services** means a comprehensive description of the activities, tasks, design features, objectives, deliverables and milestones required for the completion of Project with sufficient detail to allow a reasonably accurate estimation of resources necessary for its completion.
- A1.17 Subconsultant** means a person or organization of properly registered professional architects, engineers, registered surveyor or mapper, or other professional specialty that has entered into a written agreement with the Consultant to furnish specified Services for work to be completed under the Agreement.
- A1.18 Town Council** means the legislative body of the Town of Miami Lakes.
- A1.19 Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.

**A1.20 Town or Owner** means the Town of Miami Lakes, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, Town's performance is pursuant to Town's position as the Owner of the Project. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances will be deemed to have occurred pursuant to Town's authority as a governmental body and will not be attributable in any manner to Town as a party to this Agreement. The Town of Miami will be referred to herein as "Town". For the purposes of this Agreement, "Town" without modification means the Town Manager.

**A1.21 Wage Rates** means the effective direct expense to Consultant on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under this Agreement that justify and form the basis for professional fees regardless of actual manner of compensation.

**A1.22 Work Order** means a document approved and issued by the Town authorizing the performance of specific Professional Services for a Project(s) or task(s) under this Agreement.

**A1.23 Work Order Proposal** means a document prepared by the Consultant, at the request of the Town for Services to be provided by the Consultant.

## **Article A2 General Conditions**

### **A2.01 General**

This Agreement is issued pursuant to and in accordance with Florida Statutes Section 287.055. As a "continuing contract" under Section 287.055(2)(g), this Agreement is restricted to professional services for projects in which the estimated construction cost of such project does not exceed \$2 million, for study activity where the fee for such study activity does not exceed \$200,000, or for work of a specified nature as outlined in this Agreement. The total cumulative expenditure under this Agreement shall not exceed \$1.5 million.

### **A2.02 Term**

The term of this Agreement will be for three (3) years commencing on the effective date of the Agreement. The provisions of this Agreement will remain effective until all Services required under Work Orders issued under this Agreement have been completed.

The Town, by action of the Town Manager, will have the option to extend the term for two (2) additional period(s) of one (1) year each, subject to continued satisfactory performance as determined by the Town Manager, and to the availability and appropriation of funds. In no event shall the term of this Agreement exceed five (5) years from its commencement date. Town Commission authorization of this Agreement includes delegation of authority to the Town Manager to administratively approve said extensions.

### **A2.03 Scope of Services**

#### **A2.03-1 General**

Consultant agrees to provide the Services as specified in the RFQ and the Consultant's Proposal, which may have been revised through negotiations between the Town and the Consultant, which are incorporated into this Agreement by reference.

#### **A2.03-2 Miscellaneous Projects**

Projects will be assigned in accordance with the Agreement with a Work Order being issued by the Town for each project or task on an as needed basis during the term of the Agreement.

#### ***A2.04 Compensation***

##### ***A2.04-1 Miscellaneous Projects***

The amount of compensation payable by the Town to Consultant will be determined by a specific rate of compensation, which will be based in part on the hourly or task rates established in the Agreement on a per project basis.

No specific value has been established for this Agreement as the work will be performed on Work Orders issued by the Town, however, in no event shall the total expenditure under this Agreement exceed \$1.5 million.

##### ***A2.04-2 Payments***

Pursuant to Florida Statute Chapter 218, Part VII, Local Government Prompt Payment Act, the Town will issue payment to the Consultant after receipt of Consultant's invoice in accordance with the deadlines established in Florida Statutes Section 218.74. The payment due date for the Town for the purchase of goods or services other than construction services is forty-five (45) days after the date on which the Town receives the Consultant's invoice.

Consultant may not invoice the Town more than once per month, where each month means a period beginning on any day of one month and ending on the same day of the following month. Consultant must submit all requests for payment using the Town's standard Consultant Invoice form, and must include sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Town require one to be performed. If Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses must be submitted in accordance with Section 112.061, Florida Statutes.

#### ***A2.05 Federal Provisions***

As projects assigned under this Agreement will be funded by State or Federal monies, Form 375-040-84, attached hereto as Exhibit A, is hereby incorporated in this Agreement by reference as though fully set forth herein.

#### ***Article A3 Performance***

##### ***A3.01 Performance and Delegation***

The Services to be performed hereunder must be performed by the Consultant's own staff, unless otherwise provided in this Agreement, or approved, in writing by the Project Manager. Said approval will not be construed as constituting an agreement between the Town and said other person or firm and the Town assumes no liability or responsibility for any Subconsultant.

##### ***A3.02 Removal of Unsatisfactory Personnel***

The Town Manager may make written request to Consultant for the prompt removal and replacement of any personnel employed or retained by the Consultant to provide and perform Services pursuant to the requirements of this Agreement. The Consultant must respond to the Town within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by the Town. Such request will solely relate to said employees work under this Agreement.

##### ***A3.03 Consultant Key Staff***

The parties acknowledge that Consultant was selected by the Town, in part, on the basis of qualifications of particular staff identified in Consultant's response to Town's solicitation, hereinafter referred to as "Key Staff". Consultant must ensure that Key Staff are available for Services hereunder as long as said Key Staff is in Consultant's employ. Consultant must obtain prior written acceptance of Project Manager to change Key Staff. Consultant must provide the Project Manager with such information as necessary to determine

the suitability of proposed new Key Staff. The Project Manager will act reasonably in evaluating Key Staff qualifications. Such acceptance will not constitute any responsibility or liability for the individual's ability to perform.

#### ***A3.04 Time for Performance***

The Consultant agrees to start all Services hereunder upon receipt of a Notice to Proceed or signed Work Order issued by the Town Manager and to complete each assignment, task or phase within the time stipulated in the Notice to Proceed or Work Order. Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of various assignments, tasks or phases may be granted by the Town Manager should there be a delay on the part of the Town in fulfilling its obligations under this Agreement as stated herein. Such extension of time will not be cause for any claim by the Consultant for extra compensation.

#### ***A3.05 E-Verify Requirements***

Projects awarded under the Agreement may require the Consultant to comply with the Department of Homeland Security E-Verify program. Work Orders issued under the Agreement will identify the need to comply with the E-Verify program.

For LAP projects, Consultant and Subconsultants must utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant or Subconsultant during the term of the Agreement. Consultant must provide documentation from Homeland Security verifying a new employees eligibility, for itself or its Subconsultant, prior to the employee performing any Services under the Agreement.

#### ***A3.06 Disadvantaged Business Enterprises***

Federal and State participation in projects may require certain participation goals to assure and encourage full participation of DBE's in the provision of goods and services. The Town expects the Consultant to adhere to these participation goals. Contract specific goals are not placed on Federal/State contracts; however, FDOT currently has an overall 9.91% DBE goal.

Pursuant to Section 49 CFR 26.13(b), the Consultant agrees to abide by and include the following statement in all of its contracts entered into in connection to any Work to be performed under this Contract:

"The Consultant, sub recipients or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate."

For more information on DBE Participation or Federal or State requirements, please contact FDOT Equal Opportunity Office and consult Section L of FDOT Form 375-040-84, which is attached to this RFQ.

#### ***Article A4 Standard of Care***

Consultant is solely responsible for the technical accuracy and quality of its services. Consultant must perform all services in compliance with Florida Administrative Code Rule 61G15-19.001(4) and section 471.033(1)(g) of the Florida Statutes. Consultant must perform due diligence, in accordance with best industry practices, in gather information and inspecting a project site prior to the commencement of the Services. Consultant will be responsible for the professional quality, technical accuracy and coordination



of all reports, design, drawings, specification, and other Services furnished by the consultant under this Agreement. Consultant must, without additional compensation, correct or revise any errors, omissions, or deficiencies in its reports, designs, drawings, specification or other Services. Consultant will also be liable for claims for delay costs, and any increased costs in construction, including but not limited to additional work, demolition of existing work, rework, etc., resulting from any errors, omissions, or deficiencies in its reports, designs, drawings, specification or other Services.

#### **Article A5 Subconsultants**

All subconsultants utilized to perform services under this Agreement must be prequalified by FDOT prior to the commencement of any Work under this Agreement.

#### **Article A6 Default**

##### **A6.01 General**

If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant will be in default. Upon default, the Town, in addition to all remedies available to it by law, may immediately, upon written notice to Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Town to Consultant while Consultant was in default must be immediately returned to the Town. Consultant understands and agrees that termination of this Agreement under this section does not release Consultant from any obligation accruing prior to the effective date of termination.

In the event of termination due to default, in addition to the foregoing, Consultant will be liable to the Town for all expenses incurred by the Town in preparing and negotiating this Agreement, as well as all costs and expenses incurred by the Town in the re-procurement of the Services, including consequential and incidental damages. In the event of default, Town may also suspend or withhold reimbursements from Consultant until such time as the actions giving rise to default have been cured.

##### **A6.02 Conditions of Default**

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

###### **A6.02-1**

Consultant fails to obtain or maintain the required insurance.

###### **A6.02-2**

Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the Town, beyond the specified period allowed to cure such default.

###### **A6.02-3**

Consultant fails to commence the Services within the time provided or contemplated herein, or fails to complete the Services in a timely manner as required by this Agreement.

##### **A6.03 Time to Cure Default; Force Majeure**

Town through the Town Manager or designee will provide written notice to Consultant as to a finding of default, and Consultant must take all necessary action to cure said default within time stipulated in said notice, after which time the Town may terminate the Agreement. The Town, at its sole discretion, may allow additional days to perform any required cure if Consultant provides written justification deemed reasonably sufficient.

Should any such failure on the part of Consultant be due to a condition of Force Majeure as the term is interpreted under Florida Law, then the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

#### **Article A7 Termination of Agreement**

##### ***A7.01 Town's Right to Terminate***

The Town Manager has the right to terminate this Agreement for any reason or no reason, upon ten (10) days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents, including all electronic copies related to Services authorized under this Agreement, whether finished or not, must be turned over to the Town. The Consultant will be paid for the Services performed and accepted, provided that said documentation is turned over to Town Manager within ten (10) business days of termination. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Consultant until all documentation is delivered to the Town Manager or designee.

Consultant will have no recourse or remedy from a termination made by the Town except to retain the fees earned as compensation for the Services that was performed in complete compliance with this Agreement, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will, have against the Town, its officials or employees.

##### ***A7.02 Consultant's Right to Terminate***

Consultant will have the right to terminate this Agreement, in writing, following breach by the Town, if the breach of the Agreement has not been corrected within sixty (60) days from the date of the Town's receipt of a written statement from Consultant specifying its breach of its duties under this Agreement.

##### ***A7.03 Termination Due to Undisclosed Lobbyist or Agent***

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

For the breach or violation of this provision, the Town has the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

#### **Article A8 Documents and Records**

##### ***A8.01 Ownership of Documents***

All tracings, drawings, specifications, maps, computer files, reports and any other documents prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, including all electronic digital copies are considered works made for hire and will, based on incremental transfer wherein the above will become the property of the Town upon payments made to Consultant or termination of this Agreement, without restriction or limitation on their use, and will be made available, on request, to the Town at any time during the performance of the Services or upon completion or termination of this Agreement. Consultant must not copyright any material and products or patent any invention developed under this Agreement. The Town has the right to visit the site where the Services are being provided at any time. The Consultant will be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the Town's use and occupancy of the Project.

***A8.02 Delivery Upon Request or Cancellation***

Failure of the Consultant to promptly deliver all such documents, both hard copy and digital, to the Town Manager within ten (10) days of cancellation, or within ten (10) days of request by the Town Manager, will be just cause for the Town Manager to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant will have no recourse from these requirements.

***A8.03 Use by the Town***

It is understood that all Consultant agreements and Work Orders for new work will include the provision for the re-use of plans and specifications, including construction drawings, at the Town's sole option, and by virtue of signing this Agreement the Consultant agrees to such re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use. The Consultant will not be liable for re-use by the Town of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Agreement.

***A8.04 Nondisclosure***

To the extent allowed by law, Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without Town Manager's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Services rendered by Consultant hereunder, and Consultant will require all of its employees and agents comply with the provisions of this paragraph.

***A8.05 Maintenance of Records***

Consultant will keep adequate records and supporting documentation, which concern or reflect its services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, must be kept in accordance with statute. Otherwise, the records and documentation will be retained by Consultant for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. Town, or any duly authorized agents or representatives of Town, has the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however such activity will be conducted only during normal business hours.

Upon completion of or termination of the Agreement the Consultant, as stated in Chapter 199.701 of the Florida Statutes, transfer, at no cost, to the Town all public records in possession of the Consultant related to the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

***Article A9 Indemnification***

To the fullest extent permitted by law, the Consultant must hold harmless, indemnify and defend the Town, the State of Florida, the Florida Department of Transportation, and their officials and employees from any and all claims, losses and causes of actions which may arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the Consultant, its agents, employees, or subconsultants. The Consultant must pay all claims and losses of any nature whatsoever in connection therewith and will defend all project related suits, in the name of the Town, the State of Florida, or the Florida Department of Transportation when applicable, and must pay all costs, including without limitation, reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. The Consultant's obligation under this paragraph will not be limited in any way by the agreed upon Agreement price, or the Consultant's limit of, or lack of, sufficient insurance protection, and will apply to the full extent that it is caused by the negligence, act,

omission, recklessness or intentional wrongful conduct of the Consultant, its agents, servants, or representatives.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to, nor shall it constitute a waiver of the State of Florida or the Town of Miami Lakes' sovereign immunity.

#### **Article A10 Insurance**

The Consultant must not start Services under this Agreement until the Consultant has obtained all insurance required hereunder and the Town has approved such insurance.

##### **A10.01 Companies Providing Coverage**

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Town Manager. All companies must have a Florida resident agent and be rated at least A(X), as per A.M. Best Company's Key Rating Guide, latest edition.

##### **A10.02 Verification of Insurance Coverage**

The Consultant must furnish certificates of insurance to the Town Manager for review and approval prior to the execution of this Agreement. The Certificates must clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of award to the Consultant. Consultant must maintain coverage with equal or better rating as identified herein for the term of this Agreement. Consultant must provide written notice to the Town Manager of any material change, cancellation or notice of non-renewal of the insurance within 30 days of the change. Consultant must furnish a copy of the insurance policy or policies upon request of the Town Manager within ten (10) days of written request.

##### **A10.03 Forms of Coverage**

###### **A10.03-1 Commercial General Liability and Automobile Liability**

Consultant must maintain commercial general liability coverage with limits of at least \$500,000 per occurrence, \$1,000,000 aggregate for bodily injury and property damage. The coverage must include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements, as applicable. Coverage must be written on a primary, non-contributory basis with the Town listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation is read (30) days/(10) days for nonpayment.

###### **A10.03-2 Business Automobile**

The Consultant must provide business automobile liability coverage including coverage for all owned, hired and non-owned autos with a minimal combined single limit of \$1,000,000 naming the Town as an additional insured with respect to this coverage. Notice of cancellation should read (30) days/(10) days for nonpayment.

###### **A10.03-3 Professional Liability Insurance**

The Consultant must maintain Professional Liability Insurance including Errors and Omissions coverage in the minimum amount of \$1,000,000 per claim, and \$1,000,000 aggregate providing for all sums which the Consultant will be legally obligated to pay as damages for claims arising out of the Services performed by the Consultant, or any person employed by the Consultant, in connection with this Agreement. This insurance must be maintained for at least one year after completion of the construction and acceptance of the construction and acceptance of any project covered by this Agreement.

**A10.03-4 Worker's Compensation Insurance**

Consultant must maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee's Liability with a minimum limit of \$500,000 each occurrence.

**A10.04 Modifications to Coverage**

The Town Manager reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Consultant in accordance with Article 10.06 herein. Consultant must comply with such requests unless the insurance coverage is not then readily available in the national market, and may request additional consideration from Town accompanied by justification.

**Article A11 Miscellaneous**

**A11.01 Audit Rights**

The Town reserves the right to audit the Consultant's accounts during the performance of this Agreement and for five (5) years after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Consultant.

**A11.02 Entire Agreement**

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the Town and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed in accordance with the requirements of the Agreement. Waiver by either party of a breach of any provision of this Agreement will not be deemed to be a waiver of any subsequent or other breach of any provision of this Agreement.

**A11.03 Successors and Assigns**

The performance of this Agreement must not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Consultant without the written consent of the Town Council or Town Manager, as applicable. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Consultant will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

The Consultant and the Town each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

**A11.04 Truth-In-Negotiation Certification**

In compliance with the Consultant's Competitive Negotiation Act the Consultant certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of Notice to Proceed. The original Project price and any addition thereto will be adjusted to exclude any significant sums by which the Town determines the project price was increased due to inaccurate,

incomplete or non-current wage rates and other factual unit costs. All such price adjustments will be made within 1 year following the end of the Project.

**A11.05 Applicable Law and Venue of Litigation**

This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement, must be brought in Miami-Dade County, Florida. Each party will bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify the Town under Article A8, where Consultant must pay the Town's reasonable attorney's fees.

**A11.06 Notices**

Whenever either party desires to give written notice to the other relating to the Agreement, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice will remain until it has been changed by written notice in compliance with the provisions of this Article. Notice will be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice will be deemed given on the date sent via e-mail or facsimile. Notice will be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town of Miami:

Alex Rey  
Town Manager  
6601 Main Street  
Miami, Florida 33014  
[reya@miamilakes-fl.gov](mailto:reya@miamilakes-fl.gov)

Procurement Department  
6601 Main Street  
Miami, Florida 33014  
[procurement@miamilakes-fl.gov](mailto:procurement@miamilakes-fl.gov)

With a copy to:

Raul Gastesi  
Town Attorney  
6601 Main Street  
Miami, Florida 33014  
[gastesir@miamialkes-fl.gov](mailto:gastesir@miamialkes-fl.gov)

For Consultant:

David G. Romano, PE  
Director of Construction Management  
R.J. Behar & Company, Inc.  
7850 NW 146<sup>th</sup> Street  
Suite 504  
Miami Lakes, Florida 33016  
[dromano@rjbehar.com](mailto:dromano@rjbehar.com)

**A11.07 Interpretation**

The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

***A11.08 Joint Preparation***

Preparation of this Agreement has been a joint effort of the Town and Consultant and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

***A11.09 Priority of Provisions***

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement will prevail over any document incorporated by reference and be given effect.

***A11.10 Mediation - Waiver of Jury Trial***

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the performance of the Services, the parties to this Agreement agree all disputes between them will be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

***A11.11 Time***

Time is of the essence in this Agreement.

***A11.12 Compliance with Laws***

Consultant must comply with all applicable laws, codes, ordinances, rules, regulations and resolutions including, without limitation, the Americans with Disabilities Act ("ADA"), as amended, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. The Consultant represents and warrants that there will be no unlawful discrimination as provided by law in connection with the performance of this Agreement.

***A11.12-1 Non-Discrimination***

Town warrants and represents that it does not and will not engage in discriminatory practices and that there will be no discrimination in connection with Consultant's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Consultant further covenants that no otherwise qualified individual will, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

***A11.12-2 OSHA Compliance***

The Consultant warrants that it will comply with all OSHA and other safety precautions as required by federal, state or local laws, rules, regulations and ordinances.

***A11.12-3 ADA Compliance***

Consultant will affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor or services funded by the Town, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines and standards. Additionally, the Consultant will take affirmative steps to insure nondiscrimination in employment of disabled persons.

**A11.13 No Partnership**

Consultant is an independent contractor. This Agreement does not create a joint venture, partnership or other business enterprise between the parties. The Consultant has no authority to bind the Town to any promise, debt, default, or undertaking of the Consultant.

**A11.14 Discretion of Town Manager**

Any matter not expressly provided for herein dealing with the Town or decisions of the Town will be within the exercise of the reasonable professional discretion of the Town Manager.

**A11.15 Resolution of Disputes**

Consultant understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town will be submitted for resolution in the following manner.

The initial step will be for the Consultant to notify the Procurement Manager in writing of the dispute identified in Article A12.06, Notices. Consultant must, within five (5) calendar days of the initial notification, all supporting documentation to the Procurement Manager. Failure to submit such appeal of the written finding will constitute acceptance of the finding by the Consultant. Upon receipt of said documentation the Procurement Manager will review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Procurement Manager fail to resolve the dispute the Consultant must submit their dispute in writing within five (5) calendar days to the Town Manager. Failure to submit such appeal of the written finding will constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Town Manager will review the issues relative to the dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation require approval or disapproval by the Town Council, Consultant will not be entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Commission if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where Town Manager's decision is subject to Town Commission approval; or
- (iii) Town has waived compliance with the procedure set forth in this section by written instrument(s) signed by the Town Manager.

**A11.16 Contingency Clause**

Funding for this Agreement is contingent on the availability of funds and continued authorization for activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds or change in regulations, upon thirty (30) days' notice.

**A11.17 Third Party Beneficiary**

Consultant and the Town agree that it is not intended that any provision of this Agreement establishes a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

**A11.18 No Estoppel**

Neither the Town's review, approval or acceptance of, or payment for Services performed under this Agreement will be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Consultant will be and remain liable to



the Town in accordance with applicable laws for all damages to the Town caused by the Consultant's negligent performance of any of the Services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

***A11.19 Performance Evaluation***

At the end of the contract period, the Town will evaluate the firm's performance. This evaluation will become a public record.

**END OF SECTION**

## **SECTION B - SCOPE OF WORK**

### **Article B1 General**

Consultant must provide comprehensive Civil Engineering and related services for Project(s), on an as needed basis, for which Consultant was selected in accordance with Section 287.055 Florida Statutes, as amended, Consultants' Competitive Negotiations Act (CCNA).

#### ***B1.01 Scope of Services***

Construction Engineering and Inspection Services will include, but are not limited to, public meetings, review of work prepared by Subconsultants, field investigations and observations, construction contract administration, as-built documentation and other related architectural and engineering services as needed to complete the Projects.

Consultant may be required to perform all or some of the services presented in this Agreement, depending on the needs of the Town for a Project.

#### ***B1.02 Work Orders***

When the Town Manager has determined that a specific phase of a Project or a Project is to proceed, the Town Manager will request in writing, a Work Order Proposal from the Consultant based on the proposed Scope of Services provided to the Consultant in writing by the Town Manager. The Consultant, the Town Manager, and others if appropriate, may have preliminary meetings, if warranted, to further define the Scope of Services and to resolve any questions. The Consultant will then prepare a Work Order Proposal following the format provided by or acceptable to the Town, indicating the proposed Scope of Services, total time for performance, time for performance of each task, phase or deliverable, staffing (including proposed hours per individual and/or classification, Subconsultants, and deliverable items and/or documents. The Town, at its sole discretion may provide the Consultant with a standardized Work Order Proposal Form to be used for all requests.

The Town Manager may accept the Work Order Proposal as submitted, reject the Work Order Proposal, or negotiate revisions to the Work Order Proposal. Upon successful conclusion of negotiations, the Consultant may be required to submit a revised final Work Order Proposal. If negotiations cannot be successfully completed, the Town Manager may terminate negotiations and may request a Work Order Proposal from another consultant under contract with the Town, or secure such services through other means available to the Town. Upon approval of the Work Order Proposal the Town Manager will issue a written Work Order assigning the Project to the Consultant.

It is understood that a Work Order or Notice to Proceed may be issued under this Agreement at the sole discretion of the Town Manager and that the Consultant has no expectation, entitlement, right to or privilege to receive a Work Order and/or Notice to Proceed for any Project or task. The Town reserves at all times the right to perform any or all Professional Services in-house, or with other private professional architects or engineers as provided by Section 287.055, Florida Statutes, as amended, (Consultants' Competitive Negotiation Act) or to discontinue or withdraw any or all Projects or tasks or to exercise any other choice allowed by law.

This Agreement does not confer on the Consultant any particular, exclusive or special rights to any Work required by the Town. Outside of this Agreement, the Town may submit proposals and/or qualifications for any professional services which the Consultant is qualified to perform in response to any public solicitation issued by Town.

## **Article B2 Basic Services**

Consultant agrees to provide complete construction engineering and inspection services as set forth in the Contract, in accordance with the FDOT manuals (latest edition), FDOT/LAP manuals (latest edition), and all federal, state, county and Town, laws, codes and ordinances. Consultant must maintain an adequate staff of qualified personnel on the Services at all times to ensure its performance as specified in the Agreement.

The Consultant's Basic Services that may be provided under the Agreement will (at a minimum) consist of, but not be limited to, the following:

1. Administer the Construction Contract and monitor and inspect the work performed by the Construction Contractor ("Contractor") such that the project is constructed in reasonable conformity with the plans, specifications, and special provisions of the Construction Contract.
2. Resident Engineering Services - Coordinate the Construction Contract administration activities of all parties other than the Contractor involved in completing the construction project. Services will include maintaining the required level of surveillance of Contractor activities, interpreting plans, specifications, and special provisions for the Construction Contract. Maintain complete, accurate records of all activities and events relating to the project and properly document all project changes. The following Services must be performed:
  - a. General Coordination: Consultant must communicate daily or periodically with the Town, the Engineer of Record ("EOR") and Contractor, as needed. Consultant must report on concerns as it relates to the construction effort and activities. In addition, the Consultant must also coordinate with the Town's Project Manager where notifications such as utility outages, road closures, etc. may be required. The Consultant will monitor and verify that the Contractor has made the required notifications to the utility owners, residents and businesses as may be required.
  - b. Estimating Services: Provide accurate cost estimates and schedules to avoid cost overruns and schedule slips. Prepare cost estimates and schedules by helping manage resources and supporting assessment and decision making. Services may encompass a wide range of cost related aspects of engineering and program management, but in particular cost estimating, cost analysis/cost assessment, design to cost, schedule analysis/planning and risk assessment.
  - c. Value Engineering Meetings: The Consultant will be expected to attend, participate, and provide cost estimating information at value engineering meetings between the Town, the Engineer of Record, and the Contractor for the construction project.
  - d. Resident Information Meetings: Consultant will be expected to attend, address resident concerns, participate, produce meeting minutes, and take a lead role in Resident Information Meetings with the Town for the Project.
  - e. Pre-Construction Meetings: The Consultant will be expected to attend, participate, produce meeting minutes, and take a lead role in Pre-Construction Meeting with the Town, EOR and Contractor for the Project. The Pre-construction Meeting will be scheduled once the Town issues the first Notice-to-Proceed to the Contractor.
  - f. Weekly Construction Progress Meetings: The Consultant will attend, participate and take a lead role in weekly construction project meetings with the Town's Project Manager, EOR and Contractor on the Project. These meetings will serve as forums to review the status of construction progress, discuss construction issues, discuss schedule and cost concerns, discuss potential changes or conflicts, review the status of shop drawing submittals and Construction Document clarifications and interpretations, and to resolve problems before they become critical. Consultant will prepare weekly meeting minutes and distribute to all

meeting attendees, review the two week look ahead provided by the Contractor and provide comments or objections to written statements within the specified timeframe. The Consultant will prepare detailed weekly reports that describe the construction activities, progress, incidents and issues that have occurred on the construction site and distribute to the attendees in advance of the weekly construction progress meetings.

- g. Field Observations: The Consultant will conduct field observations on a daily basis throughout the duration of construction. Field observations may be provided jointly by the Town and the Consultant. If and when necessary, the Town will provide part-time construction inspectors for the duration of the Project. The role of the Town's construction inspectors will be limited. The Consultant will be present at the construction site daily during the construction phase of the Project and will be expected to be available, as needed, throughout the Contractor's work day.
- h. Stormwater Permit - Verify that the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project. For each project that requires the use of the NPDES General Permit, inspector the inspector (at least one) should have successfully completed the "Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors". The Consultant's inspector will be familiar with the requirements set forth in the FEDERAL REGISTER, Vol. 57, No. 187, Friday, September 5, 1992, pages 4412 to 4435 "Final NPDES General Permits for Storm Water Discharges from Construction Sites" and the Town's guidelines.
- i. Daily Reports: The Consultant will prepare daily reports, on the same date as construction occurs, to record the daily performance of the Contractor as well as other significant construction related matters. Daily reports will be uploaded by the Consultant to e-Builder™, the Town's document management system. At the end of each day or the beginning of the following day, the Consultant will forward the original daily reports to the Town for review. The Consultant will maintain and file paper copies of the daily reports onsite for reference. The daily reports will include records of when the Contractor is on the job-site, general field observations, weather conditions, change orders, changed conditions, list of job site visitors, daily drilling and testing activities, testing results, testing observations, and records of the outcome of tests and inspections. At a minimum the daily reports will contain the following information:
  - Weather and general site conditions
  - Contractor's work force counts by category and hours worked
  - Description of Work performed including location
  - Equipment utilized
  - Names of visitors to the jobsite and reason for the visit
  - Tests made and results
  - Construction difficulties encountered and remedial measures taken
  - Significant delays encountered and apparent reasons why
  - Description of (potential) disputes between the Contractor and Town
  - Description of (potential) disputes between the Contractor and residents
  - Summary of additional directions that may have been given to the Contractor
  - Detailed record of materials, equipment and labor used in connection with extra work, or where there is reason to suspect that a claim or request for Change Order may be submitted by the Contractor

- Summary of any substantive discussions held with the Contractor and/or Town
  - Summary of nonconforming work referenced to corresponding Non-Compliance Notice
  - A log of photographs taken
- j. Materials Testing: Consultant will provide sampling and testing of various materials to be used in the course of the Work and report its results and recommendations to the Town's Project Manager. Materials to be tested include aggregates; concrete products; cements and additives, including water, epoxies, and curing compounds; bituminous materials, mixtures, additives, and joint fillers; metals; galvanizing, rubber, paints, and other coatings; and soils and limerock.
- k. Photographic Record: Consultant will provide a photographic record of the overall progress of construction, beginning with preconstruction documentation, following with on-going construction documentation, and ending with post-construction documentation. Photographs will be digital snapshot type taken to define the progress of the project and will be provided monthly, labeled by date, time and location. The Consultant will provide digital copies submitted electronically to the Town's Project Manager and EOR and printed copies if requested by the Town's Project Manager or EOR.
- l. Adherence to Construction Documents: The Consultant will review materials and workmanship of the project and report to the Town's Project Manager and EOR any deviations from the Construction Documents that may come to the Consultant's attention. Consultant will determine the acceptability of the work and materials and, in concert with the EOR (as necessary), make recommendations to the Town's Project Manager to reject items not meeting the requirements of the Construction Documents.
- m. Delivery of Unaccepted Materials to Jobsite: As new materials are delivered to the jobsite, the Consultant will check the material's certifications and samples and verify that an approved shop drawing was submitted for the material in question. If it is determined that a submittal has not been approved, the Consultant will immediately notify the Town's Project Manager and issue a Non-Compliance Notice.
- n. Shop Drawing Submittals: The Consultant will review shop drawing and product approvals throughout the duration of the construction period for familiarity prior to delivery of materials.
- o. Issuance of Non-compliance Notices: The Consultant will be responsible for notifying the Town when they become aware of a condition that is believed to be in non-compliance (defective work) with Construction Documents. Anytime the Consultant notices a potential construction problem or a condition that could result in non-complying materials, equipment or workmanship, the Consultant will need to determine whether the condition poses an immediate threat to public health or safety.
- 1) If a condition does not pose a threat to public health or safety, immediate verbal notification or "Pre-Noncompliance Notice" of the potential non-compliance should be made to the Contractor and the Town's Project Manager. This verbal notice will be documented in the Consultant's daily report, as well as an e-mail to the Contractor with a copy to the Town's Project Manager advising the Contractor of potential construction problems, errors, or deficiencies that can be promptly resolved and do not warrant a Non-compliance Notice. If the Contractor fails to respond to the verbal notification within a reasonable timeframe, the Consultant will notify the Town's Project Manager and will issue a written Non-compliance Notice.

- 2) If a condition poses an immediate threat to public health or safety, the Consultant will notify the Contractor and Town's Project Manager immediately and the Town's Project Manager will issue a Non-compliance Notice to the Contractor. Non-compliance Notices will include a description of the Work that does not meet the construction contract requirements, along with a required timetable for corrective work to be implemented by the Contractor. Other items that should be included in the Notice include a reference to the provision of the Construction Documents that has been violated.
- p. Damage to Existing Facilities: The Consultant will identify any existing facilities damaged by the Contractor and verify that the Contractor has notified the respective owner(s). The Consultant will include record of such occurrences in the daily reports.
  - q. Change Orders: Consultant will perform an independent review of any Change Orders submitted by the Contractor and provide a written statement noting recommendation for approval or denial of the Change Order to the Town. If recommended for approval, the Consultant will note if the requested cost and schedule impacts are fair and reasonable. The Consultant will also participate in change request review meetings with Town's Project Manager and Contractor.
  - r. Requests for Information (RFIs): When RFIs involve design issue interpretations, the Consultant will coordinate with the Town's Project Manager to resolve the Contractor's Requests for Information, Field Orders, and other related correspondence. The Consultant will also be responsible for verifying that the Town's Project Manager or EOR is providing a written response to RFIs in a timely manner and for processing, logging, and distributing all RFIs
  - s. Schedule: Analyze the Contractor's schedule(s) (i.e. baseline(s), revised baseline(s), updates, as-built, etc.) for compliance with the contract documents. Elements including, but not limited to, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. Verify the schedule conforms with the construction phasing and MOT sequences, including all contract modifications. Provide a written review of the schedule identifying significant omissions, improbable or unreasonable activity durations, errors in logic, and any other concerns as detailed in the contract documents.
  - t. Pay Requisitions: Consultant will verify Contractor's pay requisition quantities and sign-off on all pay requisition quantities in the field. Consultant will be responsible for reviewing with the Contractor the monthly payment requisition to confirm the status of completed and uncompleted work and stored materials. The Consultant will advise the Town's Project Manager of quantities being approved for subsequent concurrence for payment purposes. Payment Requisitions will only be approved by the Town after review by the Consultant.

If a situation presents itself the following procedures should be followed:

- Immediately direct personnel to remove themselves from the apparent danger.
- Notify the Contractor's superintendent of the apparent condition that caused the concern and that the affected personnel were directed to remove themselves accordingly.
- Notify the Contractor of the situation that arises concern, both in writing and verbally.
- Issue a written Notice of Noncompliance stating that the Contractor should take immediate action as it deems necessary to correct the deficiency / condition.
- Write a full report in the Daily Report on the condition found to be unsafe, all actions taken, and correspondence written, including times and names.
- Take photographs, of the concern.

- If the Contractor does not make corrections, the Consultant should notify the Town.
  - The Consultant will review the situation with the Town for further direction.
  - The condition, as well as all conversations and correspondence, will be recorded in the Consultant's Daily Report.
  - In the case of a construction-related accident, Consultant will notify the Town of the accident. Consultant will direct the Contractor to prepare an accident report with a copy forwarded to the Town.
- u. Equipment Tests and Systems Start-up: Consultant will be responsible for coordinating various tests for quality control on the projects; verifying that equipment tests and systems start-up are conducted in the presence of appropriate personnel; and that the Contractor is maintaining adequate records thereof. Consultant will observe, record, and report appropriate details relative to the test procedures and start-up.
  - v. Record Drawings: Consultant will monitor that record drawing mark-ups are properly maintained by the Contractor. The Consultant will review the record drawing mark-ups as deemed necessary by the Town's Project Manager. Contractor's failure to maintain the record drawings in up-to-date condition may be deemed grounds for withholding Contractor's monthly payment requisitions until such time as the record drawings are brought up-to-date. The Consultant will notify the Town if it considers the mark-up documents insufficient. The Town's Project Manager will make final determination of payment withholding.
  - w. Safety: Consultants will be expected to recognize a hazard that any reasonable non-safety professional might be expected to recognize. In addition, those safety obligations extend only to recognizable hazards that the Consultant may note while in the normal conduct of onsite business.
  - x. Quality Control: Quality control during construction will be the responsibility of the Contractor; however, oversight and ensuring the Contractor complies with applicable jurisdictional construction standards will be enforced on the Town's behalf by the Consultant. The Consultant will review and monitor the Contractor's quality control procedures and process and where the Consultant determines that the Contractor is not maintaining acceptable levels of quality control the Consultant will notify the Town's Project Manager.
  - y. Proceeding with Disputed Work: In the event that an agreement cannot be reached on a Change Order, the Contractor must carry on the work and adhere to the project schedule in accordance with the construction contract. The Consultant will log all forced work efforts related to disputed change order on a Forced Work Daily Log Reports which will be signed and dated by the Consultant and the Contractor's representative at the completion of each workday. The Consultant will forward copies of this form to the Town's Project Manager for record purposes.
  - z. Maintenance of Traffic (MOT): The Contractor will provide the Consultant, Town's Project Manager and EOR with approved copies of its MOT at the Pre-Construction Meeting for general information purposes. It will be the Consultant's responsibility to verify compliance with the MOT in the field.
  - aa. Contractor Request for Services: When the Contractor requires services from the Town's Project Manager for issues such as water main shutdowns, tie-ins to existing water mains, special regulatory inspections, etc., a request will be made in writing by the Contractor, and forwarded by the Consultant to the Town, a minimum of three working days prior to when required.

- bb. Substantial Completion: When the Contractor considers that the Work has reached Substantial Completion, the Contractor will notify the Consultant. The Consultant will schedule a meeting to verify that the work has progressed to the substantial completion point in accordance with the Construction Documents. If the Consultant is in agreement, the Consultant will contact the Town's Project Manager and EOR to agree on a schedule for conducting a substantial completion "walk-through" inspection of the Work. Consultant will attend and participate in the substantial completion "walk-through", perform a substantial completion inspection with the Contractor, EOR and the Town, and prepare a punch list that describes items remaining to be completed using the Town's standard Substantial Completion Inspection and Punch List form.
- cc. Final Completion and Project Closeout: When the Contractor considers that the Work has reached Final Completion, the Contractor will notify the Consultant who will verify that the work has progressed to the Final Completion point in accordance the Construction Documents. If the Consultant is in agreement, the Consultant will contact the Town's Project Manager and EOR to agree on a schedule for conducting a Final Completion "walk-through" inspection of the Work. Consultant will attend and participate in the Final Completion "walk-through" and perform a Final Completion inspection with the Contractor, EOR and the Town. If the work is determined to be incomplete, Consultant and other attendees will each develop a punch list of items requiring completion or correction prior to consideration of final acceptance of each project which will be forwarded to the Contractor by the Consultant for the Project. Consultant will complete all necessary close-out and construction completion forms and documentation in coordination with the Town for the Project. The Consultant will work with the EOR and the Contractor, as necessary to ascertain materials required for the closeout binder, as required by the Town, and review the Operation and Maintenance manuals for each project for completeness prior to forwarding documentation to the Town. Once all parties determine the work is complete and the Contractor has delivered all close-out documentation to the Town, the Consultant will prepare a Final Certificate for Payment. The Consultant will be responsible for providing final certifications based on the entire scope of work for the Project.
- Provide services determined necessary for the successful completion and closure of the Construction Contract.
- dd. Consultant and EOR Relationship: These services outlined herein are intended to provide support to both the Town and the EOR during the construction phase of the Project. The Consultant will perform the services outlined in this Agreement under the supervision and contractual directives of the Project Coordinator, and will refer all matters pertaining to this Agreement to the Town. In matters relating to the design concept and constructability thereof, the Consultant will conduct this scope of services under the technical directives issued by the EOR such that the EOR's EOR can provide final certification of the design components at Project Closeout.

### **Article B3 Quality Assurance Plan**

The Consultant will furnish the Town with a Quality Assurance Plan ("QAP") within 15 calendar days after execution of the Agreement. The QAP will detail the procedures, evaluation criteria, and instructions of the Consultant's organization for providing services pursuant to this Agreement. Significant changes to the work requirements may require the Consultant to revise the QAP. It will be the responsibility of the Consultant to keep the plan current with the work requirements.

At a minimum the QAP must include, but not be limited to:



- Consultant's QA Organization and its functional relationship to the part of the organization performing the Services under the Agreement. The authority, responsibilities and autonomy of the QA organization will be detailed as well as the names and qualifications of personnel in the quality control organization.
- Methods used to monitor and achieve organization compliance with Agreement requirements for services and products.
- Outline the types of records which will be generated and maintained during the execution of the QA program.
- An officer of the Consultant firm will certify that the inspection and documentation was done in accordance with specifications, plans, Town standards, and Town's procedures.
- Maintain adequate records of the quality assurance actions performed by the organization in providing services and products under this Agreement. All records will indicate the nature and number of observations made, the number and type of deficiencies found, and the corrective actions taken.

#### **Article B4 Additional Services**

Provide assistance in claims, dispute resolution, or litigation that may result from the Construction Contract. Upon the request of the Town the Consultant will analyze any claim or dispute, assisting the negotiations leading to any settlement or resolution of the claim or dispute and process the required documentation to close-out the claim or dispute. For litigation, the Consultant will perform the services determined necessary by the Town Attorney.

#### **Article B5 Reimbursable Expenses**

##### ***B5.01 General***

Reimbursable Expenses cover those services and items authorized by Town in addition to the Basic and Additional Services and consist of actual, direct expenditures made by Consultant the purposes listed below. Any and all transportation, travel and per diem expenses within Dade, or Broward Counties will not be considered as reimbursable expenses under this Agreement.

Additional Reimbursable Expenses include, but are not limited to:

- a. Communications Expenses: Unless authorized in advance communication fees are not a reimbursable expense.
- b. Reproduction, Photography: Cost of printing, reproduction or photography, beyond that which is required by or of Consultant's part of the work, set forth in this Agreement.
- c. Surveys: Any special purpose surveys costs authorized by the Town.

**END OF SECTION**

## **SECTION C - COMPENSATION AND PAYMENTS**

### **Article C1 Method of Compensation**

Contractor's fees for Professional Services on any projects will be paid using the specific rate of compensation payment method, which will be based on an Hourly Rate as detailed in Section C of the Agreement.

#### ***C1.01 Consultant Not to Exceed***

Absent an amendment to the Agreement or to any specific Work Order, any maximum dollar or percentage amounts stated for compensation must not be exceeded. In the event they are so exceeded, the Town will have no liability or responsibility for paying any amount of such excess, which will be at Consultant's own cost and expense.

### **Article C2 Wage Rates**

#### ***C2.01 Fee Basis***

All fees and compensation payable under this Agreement will be formulated and based upon the certified negotiated Wage Rates stated in Schedule 2 of the Agreement. Said Wage Rates are the effective direct hourly rates, as approved by the Town, of Consultant employees in the specified professions and job categories that are to be utilized to provide the services under this Agreement, regardless of manner of compensation.

Should the Consultant intend to utilize personnel for a Project where the Wage Rates have not been established, the Consultant must request that the Town to add the person's wage rates to Schedule 2. The Town may require that the Consultant provide documentation substantiating the request.

#### ***C2.02 Employees and Job Classifications***

Form SC identifies the professions, job categories and/or employees expected to be used during the term of this Agreement. In determining compensation for a given Scope of Work, the Town reserves the right to recommend the use of Consultant employees at particular Wage Rate levels. Consultant must not include any profession, job category or employees in a Work Order Proposal that do not appear on Form SC. Consultant must submit a request to the Town to add such person to Form SC prior to the submittal of any affected Work Order Proposal.

#### ***C2.03 Multiplier***

The FDOT Pre-Qualification multiplier will be used for Work Orders. Said multiplier is intended to cover Consultant's employee benefits (e.g. sick leave, vacation, holiday, unemployment taxes, retirement, medical, insurance and unemployment benefits) and Consultant's profit, and overhead including, without limitation, office rent, local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, stenographic, administrative and clerical support, management and supervisory responsibilities, time or travel and subsistence not directly related to a Project. The multiplier must not be applied to the Principal, owner, or partner of the Consultant except where they are preparing drawings or specifications, preparing a study report, or similar tasks.

#### ***C2.04 Calculation***

Said Wage Rates are to be utilized by Consultant in calculating compensation payable for Work Order Proposals requested by Town. Consultant must identify job classifications, available staff and projected man-hours required for the proper completion of tasks and/or groups of tasks, milestones and deliverables identified in a request for a Work Order Proposal.

#### ***C2.05 Wage Rate Adjustments***

The Consultant may request an adjustment to the Wage Rates on an annual basis. Such request may only be made where there has been an actual increase in a Wage Rate(s) by the Consultant. The Town may

also adjust the Wage Rate where the Town Manager determines that extenuating circumstances exist. The maximum the Wage Rates depicted in Schedule 2 may be adjusted at the Consultant's request must be based on the Miami – Fort Lauderdale Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics. Such adjustment must be calculated by multiplying the ratio of the index in effect at that time divided by the previous year's index by the hourly rate entries in the Wage Rate Schedule to determine the adjusted Wage Rate Schedule.

### **Article C3 Computation of Fees and Compensation**

The Town agrees to pay the Consultant, and the Consultant agrees to accept for services rendered pursuant to this Agreement, fees computed and paid in the following manner:

#### ***C3.01 Specific Rate of Compensation***

The Town shall pay Consultant using the specific rate of compensation payment method. The fee for Professional Services on any project will be determined by the Hourly Rates provided for in Schedule 2. Any Hourly Rates contained in Schedule 2 must be the rate for each particular Consultant and Subconsultant job classification identified therein. All hourly rate fees will include a maximum not to exceed figure, inclusive of all costs expressed in the contract documents. The Town must have no liability for any fee, cost or expense above this figure.

Consultant must maintain records acceptable to the Town to track the hours of work performed by each person.

#### ***C3.02 Reimbursable Expenses***

Any fees for authorized reimbursable expenses must not include charges for any expenses identified in Article C2.03, Multiplier. All reimbursable services must be billed to the Town at direct cost expended by the Consultant. Town authorized reproductions in excess of sets required at each phase of the Work will be a Reimbursable Expense.

The Town will reimburse the Consultant for authorized Reimbursable Expenses pursuant to the limitations of this Agreement as verified by supporting documentation deemed appropriate by Town Manager or designee including, without limitation, detailed bills, itemized invoices and/or copies of cancelled checks.

Article C5 contains additional information on the payment of Reimbursable Expenses.

#### ***C3.03 Fees for Additional Services***

The Consultant may be authorized to perform Additional Services for which additional compensation and/or Reimbursable Expenses, as defined in this Agreement, may be applicable.

##### **C3.03-1 Determination of Fee**

The compensation for such services will be one of the methods described herein: mutually agreed upon Lump Sum; or Hourly Rate.

##### **C3.03-2 Procedure and Compliance**

An independent and detailed Work Order or an Amendment to a previously issued Work Order must be required to be issued and signed by the Town Manager for each additional service requested by the Town. The Work Order will specify the fee for such service and upper limit of the fee, which must not be exceeded, and must comply with the Town's regulations, including the Purchasing Ordinance, the Consultant's Competitive Negotiation Act, and other applicable laws.

#### ***C3.04 Payment Exclusions***

Consultant must not be compensated by Town for revisions and/or modifications to drawings and specifications, for extended construction administration, or for other work when such work is due to errors or omissions of Consultant as determined by Town.

### ***C3.05 Fees Resulting From Project Suspension***

If a Project is suspended for the convenience of the Town for more than three (3) months or terminated without any cause in whole or in part, during any Phase, the Consultant must be paid for services duly authorized, performed prior to such suspension or termination, together with the cost of authorized reimbursable services and expenses then due, and all appropriate, applicable, and documented expenses resulting from such suspension or termination. If the Project is resumed after having been suspended for more than three months, the Consultant's further compensation must be subject to renegotiations.

## **Article C4 Payments to the Consultant**

### ***C4.01 Payments Generally***

Payments for Basic Services may be requested monthly in proportion to Services performed. Reimbursable Expenses must be billed to the Town in the actual amount paid by Consultant. Consultant must utilize the Town standard Consultant Invoice Form that will be provided to the Consultant.

### ***C4.02 Billing – Hourly Rate***

Invoices submitted by Consultant must be sufficiently detailed and accompanied by supporting documentation to allow for proper audit of expenditures. When Services are authorized on an Hourly Rate basis, the Consultant must submit for approval by the Town Manager, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a Project, phase or task. Reimbursable Services Cost should then be added to the sum for the total charges for the personnel. The Consultant must attach to the invoice all supporting data for payments made to and incurred by Subconsultants engaged on the Project. In addition to the invoice, the Consultant must, for Hourly Rate authorizations, submit a progress report giving an update on the completion of the Project and/or the applicable phase or task.

## **Article C5 Reimbursable Expenses**

### ***C5.01 General***

Reimbursable Expenses are those items authorized by the Town outside of or in addition to the Scope of Work as identified in the Work Order (as Basic Services and/or Additional Services) and consist of actual expenditures made by the Consultant and the Consultant's Subconsultants for the following:

#### **C5.01-1 Transportation**

Identifiable transportation expenses in connection with the Project, subject to Section 112.061, Florida Statutes, as amended, excluding, however, all, general automobile transportation expenses within Miami-Dade, and Broward counties, which are not reimbursable. Transportation expenses to locations outside the Miami-Dade-Broward-Palm Beach County area or from locations outside the Miami-Dade-Broward area will not be reimbursed unless specifically pre-authorized in writing by the Town Manager.

#### **C5.01-2 Travel and Per Diem**

Identifiable per diem, meals and lodging, lodging, taxi fares and miscellaneous travel-connected expenses for Consultant's personnel are subject to Section 112.061 Florida Statutes as amended. Meals for class C travel inside Miami-Dade or Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating Consultant's employees from one of Consultant's offices to another office if the employee is relocated for more than five (5) consecutive working days. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Howard Johnson or Ramada Inn. Governmental lodging or meals will not be reimbursed that result from travel within Miami-Dade, Broward or Palm Beach Counties. Travel and per diem expenses are subject to the prior approval of the Town Manager.

C5.01-3 Communication Expenses

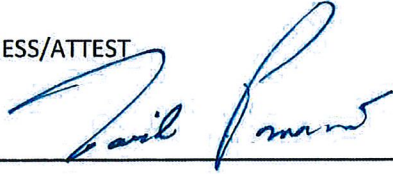
Identifiable communication expenses approved, in writing and in advance by the Town Manager, including long distance telephone, courier and express mail. Express mail or courier services are to be used only where there are significant time constraints.

C5.01-4 Reproduction, Photography

Cost of additional printing, reproduction or photography, than that set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST



Signature

David Romano, P.E., Director, CEI Dept.

Print Name, Title

Consultant, R.J. Behar & Company, Inc.



Signature

Robert J. Behar, P.E., President

Print Name, Title of Authorized Officer or Official

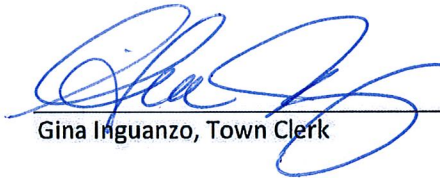
ATTEST:



Consultant Secretary  
(Affirm Consultant Seal, if available)

(Corporate Seal)

ATTEST:



Gina Inguanzo, Town Clerk

Town of Miami Lakes, a municipal corporation of the State of Florida



Alex Rey, Town Manager

APPROVED AS TO LEGAL FORM AND CORRECTNESS:



Raul Gastesi, Town Attorney

**CERTIFICATE OF AUTHORITY**

**(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of  
R. J. Behar & Company, Inc., a corporation organized and existing under the laws of  
the State of Florida, held on the 10 day of February, 2017, a resolution was duly passed  
and adopted authorizing (Name) Robert J. Behar, P.E. as (Title) President of the  
corporation to execute agreements on behalf of the corporation and providing that his/her execution  
thereof, attested by the secretary of the corporation, is the official act and deed of the corporation.  
I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 2018.

Secretary: Dereth Behar

Print: Dereth Behar

**NOTARIZATION**

STATE OF Florida )

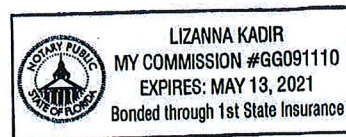
) SS:

COUNTY OF Broward )

The foregoing instrument was acknowledged before me this 19th day of March,  
2018, by Dereth Behar, who is personally known to me or who has produced  
\_\_\_\_\_ as identification and who (did / did not) take an oath.

Lizanna Kadir  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

Lizanna Kadir  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC



## **SECTION D - FORMS & SCHEDULES**

### **Form KS – KEY STAFF**

<b>NAME</b>	<b>JOB CLASSIFICATION</b>
David G. Romano	Project Manager
Robert J. Behar	Principal-in-Charge
Javier Bejarano	Construction Manager
Richard Bolt	Construction Manager
Vlad Melguizovski (CIMA Engineering Corp.)	Senior Inspector
Humberto Soteras	Senior Inspector
Mike Owensby	Senior Inspector
Dalton Polanco	Senior Inspector
Douglas Bravo (CIMA Engineering Corp.)	Inspector
Alejandro Medina	Inspector
Michelle Leon	Inspector
Logan Fasanella	Inspector
James Bard (CIMA Engineering Corp.)	ITS Inspector
Mary Cardenas	Inspector
Raj Krishnasamy (Tierra South Florida, Inc.)	Verification Testing & Material Sampling
Francois Thomas (Tierra South Florida, Inc.)	Verification Testing & Material Sampling



**FORM SC - SUBCONSULTANTS**

<b>Name of Subconsultant</b>	<b>Services Provided</b>
Tierra South Florida, Inc.	9.3 Highway Materials Testing 10.3 Construction Materials Inspection
CIMA Engineering Corp.	10.1 Roadway Construction Engineering Inspection 10.4 Minor Bridge & Miscellaneous Structures CEI

## SCHEDULE 2 - WAGE RATES SUMMARY

### R.J. Behar & Company, Inc.

JOB CLASSIFICATION	BASE HOURLY RATE	LOADED HOURLY RATE (MULTIPLIER = 2.910)
Project Manager	\$67.38	\$196.05
Senior Inspector	\$31.21	\$90.81
Project Administrator	\$50.00	\$145.48
Contract Support Specialist	\$32.00	\$93.11
Inspector	\$23.65	\$68.81
Resident Compliance Specialist	\$25.00	\$72.74

### CIMA Engineering Corp.

JOB CLASSIFICATION	BASE HOURLY RATE	LOADED HOURLY RATE (MULTIPLIER = 2.897)
Inspector (Douglas Bravo)	\$25.00	\$72.43
Senior Inspector (Vlad Melguizovski)	\$33.50	\$97.06
Senior Inspector (James Bard)	\$30.00	\$86.92

**EXHIBIT A – FORM 375-040-84 FEDERAL PROVISIONS**

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
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**TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I):**

The following terms apply to all contracts in which it is indicated that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Local Agency relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- C. Compliance with Regulations: The Consultant shall comply with the Regulations: relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Local Agency shall impose such contract sanctions as it or the Florida Department of Transportation, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
  - 1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - 2. cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through I in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the Local Agency to enter into such litigation to protect the interests of the Local Agency, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- I. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment

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of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- J. Interest of Members of Congress: No member or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- K. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- L. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.

The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.

- M. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- N. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Local Agency in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Local Agency. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- O. The Local Agency hereby certifies that neither the consultant nor the consultant's representative has been required by the Local Agency, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to
  - 1. employ or retain, or agree to employ or retain, any firm or person, or
  - 2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Local Agency further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws,

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both criminal and civil.

P. The Consultant hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the Local Agency, the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.